

RECORDATION NO. 24052-A FILED

SEP 30 '02

1-13 PM

SURFACE TRANSPORTATION BOARD

ALVORD AND ALVORD  
ATTORNEYS AT LAW  
1050 SEVENTEENTH STREET, N.W.  
SUITE 301  
WASHINGTON, D.C.

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

20036  
(202) 393-2266  
FAX (202) 393-2156  
E-MAIL [alvordlaw@aol.com](mailto:alvordlaw@aol.com)

OF COUNSEL  
URBAN A. LESTER

September 30, 2002

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Termination of Security Interest, dated as of September <sup>30</sup>~~28~~, 2002, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Memorandum of Mortgage which was previously filed with the Board under Recordation Number 24052.

The names and addresses of the parties to the enclosed document are:

Borrower:	Babcock & Brown Rail Funding LLC 599 Lexington Avenue New York, New York 10022
Secured Party:	Bayerische Hypo-Und Vereinsbank AG, as Agent FPA 4 Lease/Asset Finance Am Tucherpark 1 (FPA) 80538 Munich Germany

Mr. Vernon A. Williams  
September 30, 2002  
Page 2

A description of the railroad equipment covered by the enclosed document is:

Two hundred and eighty (280) coal porter railcars : PSTX 5000 – PSTX 5030 and PSTX 8001 – PSTX 8250, and

Fifty (50) mill gondola railcars: WE 2600 – WE 2649.

A short summary of the document to appear in the index is:

Termination of Security Interest.

Also enclosed is a check in the amount of \$30.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/anm  
Enclosures

RECORDATION NO.

24052-A FILED

SEP 30 '02

1-1 3 PM

TERMINATION OF SECURITY INTEREST

SURFACE TRANSPORTATION BOARD

**THIS TERMINATION OF SECURITY INTEREST** (this "**Termination**") is made this 30th day of September, 2002 between **BABCOCK & BROWN RAIL FUNDING LLC** (the "**Borrower**") and **BAYERISCHE HYPO- UND VEREINSBANK AG**, as agent for the banks under the Credit Agreement (the "**Agent**"). Capitalized terms used in this Termination and not otherwise defined herein shall have the meanings in the Credit Agreement (as defined below).

**WHEREAS**, the Borrower, the banks party thereto and the Agent are parties to that certain Credit Agreement (the "**Credit Agreement**") dated as of December 1, 2000;

**WHEREAS**, the Borrower and the Agent are parties to that certain Security Agreement dated as of December 1, 2000 (the "**Original Security Agreement**"), as supplemented by Security Agreement Supplement No. 1 dated December 19, 2000 ("**Security Agreement Supplement No. 1**"), Security Agreement Supplement No. 2 dated as of June 29, 2001 ("**Security Agreement Supplement No. 2**"), Security Agreement Supplement No. 3 dated as of March 28, 2002 ("**Security Agreement Supplement No. 3**"), Security Agreement Supplement No. 4 dated as of April 30, 2002 ("**Security Agreement Supplement No. 4**"), Security Agreement Supplement No. 5 dated as of June 28, 2002 ("**Security Agreement Supplement No. 5**"), Security Agreement Supplement No. 6 dated as of July 25, 2002 ("**Security Agreement Supplement No. 6**") and Security Agreement Supplement No. 7 dated as of July 26, 2002 ("**Security Agreement Supplement No. 7**"; together with the Original Security Agreement, Security Agreement Supplement No. 1, Security Agreement Supplement No. 2, Security Agreement Supplement No. 3, Security Agreement Supplement No. 4, Security Agreement Supplement No. 5 and Security Agreement Supplement No. 6, collectively, the "**Supplemented Security Agreement**");

**WHEREAS**, the lien and security interest created in favor of the Agent with respect to the Units and Qualifying Leases described in Security Agreement Supplement No. 1 were terminated and released pursuant to that certain Termination of Security Agreement dated May 29, 2001 ("**Termination No. 1**") between the Borrower and the Agent, which Termination No. 1 was duly filed for recordation with the Surface Transportation Board ("**STB**") pursuant to 49 U.S.C. Section 11301 on May 29, 2001 at 4:39 p.m. and given Recordation Number 23285-A;

**WHEREAS**, the lien and security interest created in favor of the Agent with respect to the Units and Qualifying Leases described in Security Agreement Supplement No. 2 were terminated and released pursuant to that certain Termination of Security Interest dated October 10, 2001 ("**Termination No. 2**") between the Borrower and the Agent, which Termination No. 2 was duly filed for recordation with the STB pursuant to 49 U.S.C. Section 11301 on October 10, 2001 at 1:28 p.m. and given Recordation Number 23541-A;

**WHEREAS**, the lien and security interest created in favor of the Agent with respect to the Units and Qualifying Leases described in Security Agreement Supplement No. 3 were terminated and released pursuant to that certain Termination of Security Interest dated May 9, 2002 ("**Termination No. 3**") between the Borrower and the Agent, which Termination No. 3

[Termination of Security Interest]

was duly filed for recordation with the STB pursuant to 49 U.S.C. Section 11301 on May 9, 2002 at 1:50 p.m. and given Recordation Number 22919-A;

**WHEREAS**, the lien and security interest created in favor of the Agent with respect to the Units and Qualifying Leases described in Security Agreement Supplement No. 4 were terminated and released pursuant to that certain Termination of Security Interest dated May 9, 2002 ("**Termination No. 4**") between the Borrower and the Agent, which Termination No. 4 was duly filed for recordation with the STB pursuant to 49 U.S.C. Section 11301 on May 9, 2002 at 1:55 p.m. and given Recordation Number 23961-A;

**WHEREAS**, the lien and security interest created in favor of the Agent with respect to the Units and Qualifying Leases described in Security Agreement Supplement No. 5 were terminated and released pursuant to that certain Termination of Security Interest dated September \_\_, 2002 ("**Termination No. 5**") between the Borrower and the Agent, which Termination No. 5 was duly filed for recordation with the STB pursuant to 49 U.S.C. Section 11301 on September \_\_, 2002 at \_\_.m. and given Recordation Number \_\_\_\_\_;

**WHEREAS**, the lien and security interest created in favor of the Agent with respect to the Units and Qualifying Leases described in Security Agreement Supplement No. 6 were terminated and released pursuant to that certain Termination of Security Interest dated September \_\_, 2002 ("**Termination No. 6**") between the Borrower and the Agent, which Termination No. 6 was duly filed for recordation with the STB pursuant to 49 U.S.C. Section 11301 on September \_\_, 2002 at \_\_.m. and given Recordation Number \_\_\_\_\_;

**WHEREAS**, the Supplemented Security Agreement created a lien and security interest in favor of the Agent in and to the Units and the Qualifying Leases (each as defined in the Supplemented Security Agreement);

**WHEREAS**, the Borrower and the Agent are parties to that certain Memorandum of Mortgage dated as of July 25, 2002 (the "**Memorandum of Mortgage**");

**WHEREAS**, the Memorandum of Mortgage was duly filed for recordation with the STB pursuant to 49 U.S.C. Section 11301 on July 26, 2002 at 4:12 p.m. and given Recordation Number 24052; and

**WHEREAS**, the Borrower and the Agent now desire to terminate and cancel the Agent's security interest in and mortgage lien upon all right, title and interest of the Borrower in, to and under the property described in Schedule I to Security Agreement Supplement No. 7 and Exhibits A and B to the Memorandum of Mortgage, as specified in Exhibit I hereto, and to record such termination and cancellation with the STB.

**NOW THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the Agent, intending to be legally bound, agree as follows:

1. The Borrower and the Agent hereby terminate and cancel the Agent's security interest in and mortgage lien upon all right, title and interest of the Borrower in, to and under the property described in Schedule I to Security Agreement Supplement No. 7 and Exhibits A and B

[Termination of Security Interest]

to the Memorandum of Mortgage, as specified in Exhibit I hereto, effective as of the date this Termination is filed with the STB (the "Effective Date"), and the Borrower and the Agent hereby agree that no rights, duties or liabilities under the Supplemented Security Agreement in relation to the property described in Schedule I to Security Agreement Supplement No. 7 and Exhibits A and B to the Memorandum of Mortgage, as specified in Exhibit I hereto, shall survive such termination and cancellation of the Agent's security interest in and mortgage lien upon all right, title and interest of the Borrower in, to and under the property described in Schedule I to Security Agreement Supplement No. 7 and Exhibits A and B to the Memorandum of Mortgage, as specified in Exhibit I hereto, except with respect to acts, events, or omissions under the Supplemented Security Agreement occurring on or prior to the Effective Date and indemnities with respect to such acts, events or omissions.

2. The Borrower and the Agent agree to record this Termination with the STB so as to release any security interest in and mortgage lien upon the property described in Schedule I to Security Agreement Supplement No. 7 and Exhibits A and B to the Memorandum of Mortgage, as specified in Exhibit I hereto, created by or arising out of the Supplemented Security Agreement.

3. This Termination may be executed in any number of counterparts, each executed counterpart constituting an original but all together constituting only one and the same agreement.


4. This Termination shall be governed by and construed in accordance with the laws of the State of New York and is being delivered in the State of New York.

\* \* \*

[Termination of Security Interest]

IN WITNESS WHEREOF, the Borrower and the Agent have each caused this Termination of Security Interest to be duly executed and delivered as of the date first above written.

**BABCOCK & BROWN RAIL FUNDING  
LLC**

By:   
Name: Thomas McGraw  
Title: Vice President

**BAYERISCHE HYPO- UND  
VEREINSBANK AG**, not it its individual  
capacity except as expressly provided herein, but  
solely as Agent

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

[Termination of Security Interest]

STATE OF \_\_\_\_\_ )

) SS:

COUNTY OF \_\_\_\_\_ )

On this 21th day of September, 2002, before me personally appeared Thomas McGraw, to me personally known, who, being by me duly sworn, says that he is Vice President of Babcock & Brown Rail Funding LLC and that the foregoing Termination of Security Interest was signed on behalf of said corporation. Further, he acknowledged that the execution of the foregoing Termination of Security Interest was the free act and deed of said corporation.

Jennifer Moreno  
Notary Public

(NOTARIAL SEAL)

My Commission Expires:

1/29/2006

*Jennifer Moreno*  
*Notary Public, State of New York*  
*No. 01406036346*  
*Qualified in Queens County*  
*Commission Expires January 29, 2006*

[Termination of Security Interest]

IN WITNESS WHEREOF, the Borrower and the Agent have each caused this Termination of Security Interest to be duly executed and delivered as of the date first above written.

**BABCOCK & BROWN RAIL FUNDING  
LLC**

By: \_\_\_\_\_  
Name:  
Title:

**BAYERISCHE HYPO- UND  
VEREINSBANK AG**, not in its individual  
capacity except as expressly provided herein,  
but solely as Agent

By: Stefan Niggel  
Name: **STEFAN NIGGEL**  
Title: **MANAGING DIRECTOR**

By: Martin Sobies  
Name: **MARTIN SOBIES**  
Title: **VICE PRESIDENT**



[Termination of Security Interest]

STATE OF NEW YORK )

) SS:

COUNTY OF NEW YORK )

Subscribed to me on this 25th day of September, 2002 by Stefan Niggel, Managing Director of Bayerische Hypo- und Vereinsbank AG and Martin Tobies, Vice President of Bayerische Hypo- und Vereinsbank AG.

Annette Bunzel  
Notary Public

(NOTARIAL SEAL)

My Commission Expires:

April 30, 2003

ANNETTE BUNZEL  
Notary Public, State of New York  
No. 24-4800660  
Qualified in Nassau County  
Certificate Filed in New York County  
Commission Expires April 30, 2003

**Exhibit I to  
Termination of Security Interest**

**EQUIPMENT**

Lease #	# Cars	Year Built	Description	Reporting Marks	Casualty Marks
1	280	2002	4,520 CF Aluminum Bethgon Coal Porters manufactured by Johnstown America.	PSTX 5001-5030, inclusive; and 8001- 8250, inclusive.	None.
2	50	1998	52' 5 1/2" sided Mill Gondolas manufactured by Thrall.	WE 2600-2649, inclusive.	None.

**LIST OF LEASES AND OTHER OPERATIVE AGREEMENTS**

**Lease # 1**

Railroad Equipment Lease dated as of November 28, 2001, by and between Joseph Leasing Ltd. (as assignee of Joseph Transportation Services, Inc.) and Consumers Energy Company.

Memorandum of Railroad Equipment Lease Agreement entered into November 28, 2001, between Joseph Leasing Ltd. (as assignee of Joseph Transportation Services, Inc.) and Consumers Energy Company.

Acceptance Certificate dated as of January 11, 2001, covering 135 Aluminum Bethgon Coal Porters bearing reporting marks PSTX 8001 – 8135.

Acceptance Certificate dated as of January 21, 2002, covering 135 Aluminum Bethgon Coal Porters bearing reporting marks PSTX 5001 – 5020, inclusive; and PSTX 8136 – 8250, inclusive.

Acceptance Certificate dated as of January 23, 2002, covering 10 Aluminum Bethgon Coal Porters bearing reporting marks PSTX 5021 – 5030, inclusive.

Assignment and Assumption Agreement dated November 28, 2001 between Joseph Transportation Services, Inc. and Joseph Leasing Ltd.

Notice of Assignment of Lease and Acknowledgement by Lessee dated as of May 3, 2002, among Joseph Transportation Services, Inc., Joseph Leasing Ltd. and Consumers Energy Company.

Memorandum of Assignment and Assumption Agreement dated November 28, 2001 between Joseph Transportation Services, Inc. and Joseph Leasing Ltd.

Bill of Sale dated December 14, 2001, from Johnstown America Corporation to Joseph Transportation Services, Inc.

Bill of Sale dated January 17, 2002, from Johnstown America Corporation to Joseph Transportation Services, Inc.

Assignment and Assumption of Obligations dated as of July 26, 2002 between Joseph Transportation Services, Inc. and Babcock & Brown Rail Funding LLC.

**Lease # 2**

Railroad Equipment Lease dated as of January 30, 1998 by and between Joseph Leasing Ltd. (f/k/a DJJ Leasing Ltd.) and Wheeling & Lake Erie Railway.

Memorandum of Railroad Equipment Lease dated as of January 30, 1998, between Joseph Leasing Ltd. (f/k/a DJJ Leasing Ltd.) and Wheeling & Lake Erie Railway.

[Termination of Security Interest]

Amendment No. 1 to the Railroad Equipment Lease entered into November 20, 1998, between Joseph Leasing Ltd. (f/k/a DJJ Leasing Ltd.) and Wheeling & Lake Erie Railway.

Memorandum of Railroad Equipment Lease Amendment No. 1 dated as of November 20, 1998, between Joseph Leasing Ltd. (f/k/a DJJ Leasing Ltd.) and Wheeling & Lake Erie Railway.

Amendment No. 2 to the Railroad Equipment Lease entered into January 12, 2001, between Joseph Leasing Ltd. (f/k/a DJJ Leasing Ltd.) and Wheeling & Lake Erie Railway.

Memorandum of Railroad Equipment Lease Amendment No. 2 entered into January 12, 2001, between Joseph Leasing Ltd. (f/k/a DJJ Leasing Ltd.) and Wheeling & Lake Erie Railway.

Acceptance Certificate dated as of April 22, 1998, covering 50 Mill Gondolas bearing reporting marks WE 2600 – 2649, inclusive.

**CERTIFICATION**

I, Edward M. Luria, an attorney licensed to practice in the District of Columbia, the State of Delaware and the Commonwealth of Pennsylvania, do hereby certify under penalty of perjury that I have compared the attached copy of a Termination of Security Interest with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: September 30, 2002

Edward M. Luria  
Edward M. Luria